



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 05433-99

18 November 1999

MSGT [REDACTED] FMCR
[REDACTED]
[REDACTED]

Dear Master Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB) with enclosures, dated 19 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

5433-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
AUG 19 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MASTER SERGEANT [REDACTED] SMC

Ref: (a) MSc [REDACTED] 9D Form 149 of 7 Jun 99
(b) MCO P1610.7D w/Ch 1-5
(c) ALMAR 251-98
(d) ALMAR 267-98

Encl: (1) Extract from Master Sergeant [REDACTED] Service Record
Book (SRB)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 August 1999 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980527 to 981012 (DC) was requested. References (b), (c), and (d) are the directives governing submission of the report.

2. The petitioner contends that the Reporting Senior incorrectly extended the date of the mandatory close-out fitness report from 30 September 1998 to 12 October 1998 so that information concerning his failure to maintain height/weight standards could be included. He also disclaims the "substantiated case of domestic violence" recorded in the challenged fitness report. To support his appeal, the petitioner furnishes his own statement, documentation concerning height/weight readings, and correspondence from 1996 concerning alleged child abuse.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that the issues raised in reference (a) are identical to those surfaced in the petitioner's official rebuttal to the fitness report. At the time of review, Captain [REDACTED] thoroughly addressed and resolved all of the petitioner's concerns, albeit in favor of the Reporting Senior's action.

b. Reference (c), modified by reference (d) (specifically subparagraph 3b), states: "If known in advance that another

(3) PERB REPORT W/ENCLOS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
MASTER SERGEANT [REDACTED] USMC

reporting occasion will occur within 30 days after the scheduled close-out report, delay submission of the close-out report until the date of the other occasion." This accounts for the ending date of "981012", making it a legitimate report. In this regard, the petitioner's allegation that the report is unjust and in error is unfounded.

c. The Board is not convinced or persuaded by the petitioner's inferred argument that the "substantiated case of domestic violence" concerns a 1996 issue. Attached at the enclosure is a copy of the Administrative Remarks page (NAVMC 118(11)E) from the petitioner's Service Record Book containing the entry referred to in the challenged fitness report. Accompanying that document is the petitioner's response to the counseling entry. It is clear that the incident recorded in the fitness report occurred within the time period covered -- a fact that was confirmed during a discussion between [REDACTED] (the Reporting Senior of record) and a member of the PERB staff.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Master Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

ADMINISTRATIVE REMARKS (1070)

DATE	DATE
Articles UCMJ explained to me this date as required by Article 137, UCMJ.	Articles UCMJ explained to me this date as required by Article 137, UCMJ.
(Signature)	(Signature)

980819, Materiel Readiness Company, CSSG-1, 1st FSSG: MSgt [REDACTED]
453198392, you are counseled this date concerning the following deficiencies:
Poor judgment and self control while engaging in a second documented incident of domestic violence. In this level III family domestic abuse incident you struck your 16 year old daughter in the face with anger. You exposed a temper and behavior that was inappropriate and well below the ethical conduct expected of a SNCO and senior leader of Marines. The following are recommendations for corrective action: Attend all training and comply with all recommendations provided by the Family Services Center. Communicate reciprocally with Family Services counselors and members of your chain of command. Use good judgment in maintaining control of your anger and conduct yourself with restraint and proper respect for your actions in all relationships, both professional and personal. Assistance is available from Family Services Center, your OIC, the Company 1stSgt and unit Sergeant Major and commanding officers in your chain of command. You are advised that failure to take corrective action may result in administrative separation, limitation on further service or disciplinary action under the UCMJ. You are advised that within five working days after acknowledgment of this entry a written rebuttal can be submitted and such a rebuttal will be filed on the document side of the service record. I, Master Sergeant [REDACTED] choose (to) ~~(not to)~~ make such a statement.

SNM	[REDACTED]	[REDACTED]
NAME (Last, First, Middle)		SSN

NAVMC 118(11)(REV. 3-82) SN: 0000-00-000-2706 U/I: PADS OF 100
PREVIOUS EDITIONS WILL BE USED.

11. E

5433-99

**UNITED STATES MARINE CORPS**

COMBAT SERVICE SUPPORT GROUP-1
MARINE CORPS AIR GROUND COMBAT CENTER
BOX 788280
TWENTYNINE PALMS, CA. 92278-8280

980825, In response to the page 11 entry the following statement is submitted: I was previously issued a letter of non-punitive damage approximately one week after the incident occurred and later a page -11 entry as recommended by the group commander. There is no documented report that there has been a separate incident between myself and my daughter. I reported that this has been an ongoing occurrence in which I requested support through counseling for my wife and daughter at my pervious command. Investigation by the family Advocate Program at the Ordnance Center & School, Aberdeen Maryland (my previous command) concluded that my wife had in fact been the victim of abuse by my daughter.

I question what temper is expected of a Marine that is disrespected and verbally abused by a sixteen year old that has been provided love, care, understanding and all the comforts of a good home. What behavior is appropriate for a Marine when torn between a spouse and daughter? The previously reported document was my request for support through counseling by the Family Advocate Program after paying for counseling with Shepherd & Pratt (a clinical facility) several months prior. The juvenile system is full of young adult that refuse to obey parents and those that have no respect for authority. As long as a child lives under my roof they will adhere to our rules and regulation or they have an option to seek shelter elsewhere.


A.E.SYKES

ENCLOSURE (1)